

BOOK REVIEWS

Brief Making and the Use of Law Books. Second edition. Edited by Roger W. Cooley, Special Lecturer on "Legal Bibliography." West Publishing Co., St. Paul, Minn. 1909.

To know where to find the law is one of the first requirements to become a successful lawyer. Well has it been said that it is impossible for any one man to know all the law.

Dr. Johnson hits the keynote when he says: "Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information upon it."

Law schools furnish opportunity for the acquirement of the fundamental principles of law but only practice and adaptability can teach the art of looking up the law.

The present work is designed to aid the young practitioner in the successful search and the forceful presentation of his legal claims.

In the development of the main subject the book falls naturally into several sub-topics, each of which is handled by a different writer. Among the collaborators we find such well-known names as William M. Lile, Henry S. Redfield, Eugene Wambaugh, Edson R. Sunderland and Alfred F. Mason besides Prof. Cooley.

Where to Find the Law, How to Use Decisions and Statutes, How to Find the Law, The Trial Brief, and The Brief on Appeal are the topics individually developed. Then there are two appendixes which should prove valuable to the student and lawyer. In one the four hundred and twelve main heads or titles used in the Standard Classification Scheme are carefully defined by words of inclusion and exclusion. It is obvious that this knowledge of the scope of the various titles should prove a material aid in the search for authorities.

Appendix II contains an exhaustive list of abbreviations of law publications alphabetically arranged. To show how comprehensive is the list it might be said that nearly one hundred and twenty pages are devoted to this department.

The present edition of the volume differs from the first in that a large amount of new material has been added. Those parts which treat of the subjects *How to Find the Law* and *Where to Find the Law*, have been entirely rewritten.

Then there are many valuable suggestions in the book in line of the avowed aim of the authors to give the student and young practitioner a working knowledge of the depositories of the law. And though the volume hardly measures up to the sanguine hope of its authors that it will prove the panacea for all defects in legal educational methods, there is yet reason to hope that it will awaken a responsive interest in law schools in the important branch of brief making which, according to Dean Lile of the University of Virginia School of Law, is to the average law school graduate, a vast waste of uncharted and unexplored territory.

C. K. W.

Free Press Anthology. Compiled by Theodore Schroeder. The Truth Seeker Publishing Co., New York City. 1909.

This is not technically a law book but it would be hard to find a work on a topic of more absorbing interest to the average lawyer. For in a free government such as ours, the liberty of the press and the right of free speech is the foundation upon which all law is based.

The spectacle was recently presented in a university city of the chief of police refusing a license to speak in public to a woman who came widely heralded as a teacher of anarchistic principles. It was not a suppression of utterances that were revolutionary and dangerous, but the throttling beforehand of the right of speech without direct knowledge of the message to be delivered to the people.

Without reference to the merit of any of the lecturer's claims, the incident yet serves as an illustration of a situation that might at any time confront a man in public life.

The compiler of the present work is a lawyer by profession, the attorney for the Free Speech League, and the author of many magazine articles defending freedom of speech and of the press.

Here is found abundant material on the subject—the expression of opinions of the master minds of all times. Milton's *Arcopagitica*, written in 1644, when the immortal essayist found himself in the predicament of vainly protesting against the restriction, and the suppression even, of his own writings, is reproduced practically in full. Then follow extracts from the writings of such men as John Locke, John Stuart Mill, Jeremy Bentham, Voltaire, and Herbert Spencer.

In an appendix is a discussion of various obscenity laws and their interpretation in excluding sex-literature and works on kindred subjects from the mails.

The author inclines to the belief that the American judicial conception of obscene literature, adopted from the English, is altogether too warped and prejudiced. Quoting the California Court in an opinion giving the test to be applied in such cases: "Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall," the author gives the keynote of his argument on this subject.

"It will be observed," he says, "that it (a pamphlet figuring in the California case) was criminal, if in the hands of any one imaginary person it might be speculatively believed to be injurious, no matter how much it tended to improve the morals of the rest of mankind, nor how lofty were the motives of those accused, nor how true was that which they wrote. This is still the test of obscenity under our laws, and it has worked some results which could hardly have been in contemplation by our legislators in passing our laws against 'indecent' literature."

At the very least the book is a valuable work of reference for any library, being as it is, the crystallization of the free thought of the centuries. It shows a scholarly research and a quiet dignity of treatment and it might even be read with profit by those whose profession or tastes place them in a position to mould or influence that public opinion which should find expression in the country's laws.

C. K. W.

History of Roman Private Law. Part I, Sources. By E. C. Clark, LL.D. Regius Professor of Civil Law in the University of Cambridge; also of Lincoln's Inn, Barrister-at-law. Cambridge. 1906.

This is a small but closely written volume of the University Press classics style. Of its one hundred and sixty-eight pages seven contain an introduction, three a list of authors quoted, four a compact index. There are eight pages of tables of the Juristic Writers showing the date and period or reign in which they flourished, the offices they held and works they compiled.

The body of the book consists of concise critical notes on Primary Sources, such as Numa's books, *regiae leges*, twelve tables,

edict and constitution and on the Secondary Sources. Of the latter of the Preliterary Period, he says p. 64: "According to the view here taken, it is to a combination of general tradition and individual family record—both probably fairly true in the main—that we may refer most part of the official restoration of early Republican history and the scanty notices of legal development therein preserved; all being, it is true, until after 300 B. C., under patrician custody and liable to patrician revision. . . . With regard to the main features of legal history, I do not see sufficient reason to question the general truth and approximately historical order, even of the account which has come down to modern times."

The Secondary Sources in the Literary Period are: 1. History; 2. General Literature; 3. Antiquarians, and 4. the Jurists. Of these the third is very valuable while the fourth is "our main source both of legal history and law." There is a short note on each writer in these four classes. Very little is said however by way of general conclusion or comparison of value. Consequently this volume would seem to be more useful by way of reference than as an independent treatment of sources.

In ten pages at the end is given a synoptical table of contents of what we may expect in the author's second volume, the *History of Roman Private Law*.
E. C. W.

Law, Its Origin, Growth and Function. By James Coolidge Carter, LL.D., of the New York Bar. G. P. Putnam's Sons, New York. 1907.

These thirteen lectures were prepared to be given before the Harvard Law School in the spring of 1905. But the author's death prevented their delivery. At his request, however, they have been published by his executors. In execution the book possesses a good index but no table of contents nor any kind of guide to contents.

The main thesis of these lectures is that all law is custom. (That does not imply the converse that all custom is law. In fact, much of it is known as morality, etiquette, etc.) Previous definitions have been based on one of two ideas: 1. That law is "a body of rules proceeding from a supposed law of Nature," or 2. it is "the command of the supreme power in a State." But both are merely assumptions. The author proposes to study the fact—law—much after the manner of sociologists. Indeed, in his treat-

ment of custom he seems to follow Herbert Spencer very closely in materials, method and conclusions.

On the other hand, legislation is not a true source of law. "It," p. 115, "was employed to compare differences between various classes in society and to furnish machinery by which the customary law might be more efficiently administered, and from time to time to better adapt that machinery to the changing and developing wants of society, and that where it was aimed directly at individual conduct it was for the purpose of securing better obedience to the customary law by public punishment of the more flagrant violations of custom, which is the office of criminal law; in other words, we find that at the first appearance of legislation its province and the province of Public Law were nearly contemporaneous. The province of Private Law is scarcely touched."

Legislation, however, is one of the means of improving our law. It assists the judges to keep step with public sentiment. Otherwise the law might lag behind sentiment due to the reticence of judges to say the custom has changed, or the law has changed.

To codification, the author is opposed. The uncertainty of "new cases," the impossibility of expressing law in incontrovertible language, even the experience of attempted codes show that private law ought not to be codified.

As a work on jurisprudence, we can scarcely expect to class this with Maine's or Holland's contributions. Yet these matured reflections of a scholarly lawyer are pleasing and valuable.

E. C. W.

A Treatise on the Law of Landlord and Tenant. By H. C. Underhill. Chicago. T. H. Flood & Co. 1909. 2 vols. pp. ccxxxiv. 1516.

Mr. Underhill's most recent contribution to legal literature will, we think, find favor. Especially will the young practitioner and the law student appreciate the simple, clear, concise language used in the treatment of this subject. Moreover, the experienced lawyer will find among the eight hundred and fifty-seven sub-titles something which touches almost every conceivable situation arising between landlord and tenant.

Although the table of cases covers two hundred pages it is a pleasure to note that this work is not a digest of decisions. Its text is not a mere skeleton upon which to hang cases and footnotes. On the contrary, the treatise seems to have been written out of

that fullness of knowledge essential to the production of a discussion, well-rounded, connected in thought interesting to the reader. For the most part the style is worthy of mention.

The professed purpose is the production of a treatise upon the modern law. But little space is given to the history of the origin and growth of the law of landlord and tenant. Some subjects, once important but now obsolete either by statutory legislation or judicial decision, have been omitted. In their place more timely topics have received attention. For example, we note the following: The lease of space in a department store (Sec. 198); contracts for advertising space (Sec. 204); the right to use an elevator (Sec. 282); the privileges of a tenant of a part of a building (Sec. 272); disposition of the insurance money when premises are destroyed during the term (Sec. 594); the lien of the landlord for rent and advances (Chap. xxxiii).

Mr. Underhill is a member of the New York bar. Some special stress has been placed upon the law of his home state (Secs. 86, 797 and elsewhere).

R. H. McQ.